

Central Administrative Tribunal  
Principal Bench: New Delhi

OA 2008/95

New Delhi this the 21<sup>st</sup> day of March 1997.

Hon'ble Mr N. Sahu, Member (A)

Shri Harminder Singh  
S/o Shri Sant Singh  
R/o A-365 Gharolim Dairy Farm  
Delhi-91

...Applicant.

(By advocate: Mrs Rani Chhabra)

Versus

Union of India through

1. Secretary  
Ministry of Communication  
Dept. of Telecommunication  
Sanchar Bhavan  
New Delhi.
2. General Manager Telecom  
Telephone Exchange Building  
Near Head Post Office  
Patiala (Punjab).
3. Sub Divisional Officer Phones III  
Office of General Manager Telecom  
Telephone Exchange Building  
Patiala (Punjab)
4. Assistant Engineer  
Office of General Manager Telecom  
Telephone Exchange Building  
Near Head Post Office  
Patiala (Punjab)

...Respondents.

(By advocate: Shri M.M.Sudan)

O R D E R

Hon'ble Mr N. Sahu, Member (A)

This application is directed against the oral termination of the applicant's services w.e.f. April 1995. The applicant was employed as casual labourer in the Department of Telecommunication initially on 1.9.84 under the Sub Divisional Officer Phones (I), Patiala and worked till March 1986. Again he was assigned work on muster roll in 1991 for a few days during March 1991. Thereafter the applicant was assigned work as Casual

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Lorry Driver during July to September 1993. The applicant states that from November 1993 he was continuously working till 1.4.95. Annexure A-1, however, lists the period of work and stops at 31.12.93. The respondents have categorically denied that he was ever employed after 31.12.93. The second contention of the respondents is that the post of Lorry Driver is a Group-C post which is filled in accordance with the recruitment rules prescribed for the post. The claim of the applicant for regularisation under Temporary Status and Regularisation Scheme 1989 is applicable only to Group-D staff. Therefore the application is not liable to be entertained in view of this Tribunal's decision in OA:2366/89.

2. The respondents claim that the application is barred by limitation. Since the applicant had left the job after 31.3.86 and approached the Tribunal after a lapse of 10 years, the application is hit by the provisions of sections 20 and 21 of the Administrative Tribunals Act, 1985. After a lapse of 10 years, the applicant cannot now come and claim relief in the Tribunal. It is the contention of the applicant that he was engaged from 1994 upto April 1995 though there is no evidence. Though the same is not applicable to Group -C staff, but as the applicant has been working as casual lorry driver, he should have been given temporary status, claims the applicant. The applicant has prayed for grant of temporary status for the period during which he had been working after July 1993 to April 1995.

3. The most important contention of Mrs.Rani Chhabra, learned counsel for the applicant is that it was unfair labour practice in getting the work of lorry driver done through a contractor. The job entrusted to the applicant is permanent in

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nature and as there are vacancies of lorry drivers, the respondents be directed to reinstate the applicant. An evidence has been filed to show that a contractor had engaged him.

4. The basic contention of Mr. M.M. Sudan, learned counsel for the respondents is that lorry drivers in the department are Group-C employees. As the applicant was not engaged as a casual lorry driver prior to 1.4.85, he does not fulfil the conditions prescribed in the DoT's letter dated 10.9.91 to be considered in order of seniority based on length of service even as a casual labourer. The General Manager, Telecom, Patiala had entered into an agreement dated 29.9.96 with M/s Khera Labour & Security Services for engaging labour for digging, trenching, laying of cables, erection of line and wire, fitting and installation work, etc. at the stations falling under the jurisdiction of Patiala SSA. Shri M.M. Sudan contended that the respondents are not in any way involved in the employment of the applicant because the contractor engaged him on need basis.

5. The learned counsels for the applicant and the respondents have, with the permission of the court, have cited certain rulings. Sri M.M. Sudan placed before me a decision of the C.A.T., Chandigarh Bench, dated 3.1.97 in the case of Avtar Singh v. Union of India where a verbal termination order passed was challenged. In that case also the applicant had completed more than 240 days in the calender years 1995-96 as part-time Mazdoor. He worked as a Waterman in 1992-93 for certain short period. The Tribunal held that respondents have the liberty of getting a number of odd jobs done by employing part-time workers on hourly basis. The applicant was held to be

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only a contract labourer employed on casual basis and not entitled to seek protection of Article 311. The applicant has no locus standi to agitate against any termination because in the order of appointment it was stipulated that his services can be dispensed without any prior notice. The learned counsel for the applicant relied on AIR 1995 SC 1893 in the case of Gujarat Electricity Board, Ukai v. Hind Mazdoor Sabha. That case dealt with the absorption after abolition of contract labour system.

to abolish contract labour

It clearly ruled that power is exclusively vested in appropriate Government and not in any Court or Tribunal. It pointed out a vital lacuna in the Contract Labour(Regulation and Abolition) Act,1970. The lacuna is that the Act makes no provision to the fate of the workmen of the ex-contractor after abolition of the contract labour system. The apex court held that in spite of the aforesaid lacuna the workmen of the ex-contractor can be absorbed by the principal employer after the contract system is abolished, if the principal employer finds them suitable. This decision dealt with some broad principles. It is a very important decision, but it is inapplicable to the present dispute. There is no mention anywhere that the contract labour system has been abolished and the engagement of the applicant through the contract labour system by the respondents is ab initio void. From the pleadings I find that no such conclusion can be drawn. I am of the considered view that every employer including the Government has every right to get specific items of works done through engagement of labourers for a specific period. The applicant was engaged as a lorry driver on contract basis from 22.7.1993 to 8.9.1993 and from 30.11.1993 to 31.12.1993. It was stated that the applicant had left the job on his own. The applicant was engaged as a casual labour from 1.9.1984. The

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respondents state that he left the Department and absented himself after 31.3.1986. His services during 1991-92 are stated to be unverifiable.

6. I do not think that for the short period he worked after being engaged by a contractor from July to September 1993 and from November to December 1993 can be treated as employment by the principal employer himself and as far as the contractor is concerned, it is a private employment and it is not possible to enforce any statutory right in the case of private employment. Private employment is on contract basis and the only right flowing from such a contract can be enforced only in a civil court. I therefore think that the applicant cannot rely on his service under a contractor for treatment of the said services under the principal employer himself. Even otherwise Mr. Sudan's contention that a lorry driver's job is a Group-C job and the protection of Casual Labour(Grant of Temporary Status & Regularisation) Scheme 1989 is applicable to only Group-D staff has to be accepted. As the claim related to his services during 1993-94, limitation cannot be held to attract in this case.

7. The claim of the applicant that the respondents terminated his services in violation of the provisions of Section 25 of the Industrial Disputes Act cannot be accepted. If there was violation of the principles of the Industrial Disputes Act, the applicant should have approached the machinery under that Act for redressal of his grievances. Thus this application fails because (i) an employer has every right to employ casual labour for specific periods for specific items of work and can terminate his services after the specific work has been performed (ii) the scheme cannot be made to apply to lorry drivers who belong to

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Group -C (iii) employment by a contractor ~~or~~ a labour agency cannot be imputed to the respondents themselves. The muster roll submitted only shows specific engagement and in view of the clear statement that the General Manager entered into an agreement with M/s Khera Labour & Security for engaging labour for certain work and the period shown from February 1996 in the Muster Rolls related to the records maintained by the said contractor and the said records did not relate to the department of Telecommunication is conclusive and cannot be a foundation to infer that the employer directly recruited the applicant. In view of the above, the application does not succeed. However, for filling up 50% vacancies meant for outsiders, the applicant should be given an opportunity of competing with others, waiving the age restriction, if any and if found suitable, considered for appointment.

Narasimha Sahu 21.3.97  
( N. Sahu )

Member ( A )

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